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To: "Mednick, Richard" <Mednick.Richard@epa.gov>  
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CC: john.level@atg.wa.gov  
Gary.L.Vrooman@state.or.us  
Date: 8/4/2022 7:07:46 AM  
Subject: RE: Agenda for 8/15 Meeting of Bradford Island Legal Counsel

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CONFIDENTIAL NEGOTIATION COMMUNICATION

Richard,

Regarding your suggestions for topics for the next FFA negotiation meeting, and to clarify past discussions, we have discussed in the prior meetings and in emails all of these topics. I will summarize here the status as we see it. As of our last meeting on 19 July 2022, we had tentatively planned to discuss the FFA redline that EPA, Oregon and Washington said they were working on. It is not clear from your email if that will be provided soon to allow us to prepare to discuss it on 15 August.

USACE is working hard on developing the list of primary and secondary documents that will be submitted consistent with the Fort Eustis model FFA for Consultation to demonstrate progress already made in CERCLA response actions at Bradford Island. The consultation process for these documents will establish which CERCLA response phases have been completed or are in progress and what needs to be conducted next for CERCLA response to form the basis for the SMP. The SMP cannot be prepared until there is a common understanding of the progress already made at great expense toward remediation of the OUs at Bradford Island. We will provide to this group a redline of the FFA with our proposed list of completed CERCLA primary and secondary documents. After we submit our proposed list, USACE will be prepared to have discussions with this group on the proposed list, and then to begin preparation of the SMP. These discussions may include technical staff as appropriate along with our agencies' legal negotiators.

In the meantime, at Bradford Island USACE is proceeding with additional data gathering to support further progress on CERCLA response, all of which was discussed with EPA and State staff before the NPL listing. I will be providing a more detailed list of this work to this group soon. As I have said in our prior negotiation calls, USACE is not proceeding with the preparation of any primary documents, and is willing to begin the consultation process on what will be secondary documents that are yet to be prepared before the FFA is signed if EPA and the States are willing to consider this to satisfy the requirements of the Consultation section of the FFA after it is signed. We have also said before that no parallel process can be established that is different than the Fort Eustis model FFA before or after the Bradford Island FFA is signed.

As for the Yakama Nation, we have addressed this topic in discussions and in emails, so I won't repeat it in full again. All the interested Indian Tribes, including the Yakama Nation and several others, have been and will continue to be offered meaningful opportunities for involvement in the CERCLA process for Bradford Island by USACE. No one tribe can be given special status or a quasi-regulatory role that is not supported in Federal law. Consistent with CERCLA, the NCP, EPA guidance and training materials online, and the DoD public involvement regulations, USACE is actively working on the community involvement plan and is proceeding with establishing a community advisory group that will include tribal members and representatives to the extent they are willing to participate. We continue to have serious concerns with EPA suggesting it might provide to the Yakama Nation deliberative documents presented by USACE pursuant to the FFA for regulator consultation or act as a spokesperson for the Yakama Nation in the FFA negotiation process.

During the period before the FFA is signed and in effect, Chris Budai is the Portland District Project Manager who can discuss technical details of ongoing work with the staff of EPA, ODEQ and WDOE, but she has no authority to discuss the FFA and should not be asked to address the FFA or related issues. She is providing regular opportunities for technical discussions aimed at familiarization with prior work at Bradford Island to EPA and will be offering ODEQ and WDOE opportunities to participate in these discussions. This is not intended to provide a forum for FFA discussions of primary and secondary documents or the SMP, however it is intended to keep the parties informed of ongoing site work and

establish communication channels for technical discussions pending the FFA and after it is in effect.

Our goal for the FFA negotiations is to reach agreement on a Fort Eustis model based FFA specific to the Bradford Island NPL Site with a good understanding among the FFA parties of the CERCLA response actions at Bradford Island past and planned. Then the NCP and the FFA can guide the parties toward more progress in the future on cleanup and robust community involvement including the interested Indian Tribes. We trust you all share these goals.

VR, Ann  
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**From:** Mednick, Richard <Mednick.Richard@epa.gov>  
**Sent:** Friday, July 29, 2022 12:24 PM  
**To:** Wright, Ann L CIV USARMY CEHQ (USA) <Ann.L.Wright@usace.army.mil>; Matson, Jeffrey T CIV USARMY CENWP (USA) <Jeffrey.T.Matson@usace.army.mil>  
**Cc:** john.level@atg.wa.gov; Gary.L.Vrooman@state.or.us  
**Subject:** [Non-DoD Source] Agenda for 8/15 Meeting of Bradford Island Legal Counsel

Hello Ann and Jeff,  
For our attorney meeting on August 15<sup>th</sup>, based on requests from EPA/WA/OR officials and input from the Yakama Nation, EPA considers the following agenda items ripe for discussion and resolution:

1. The preparation by USACE and distribution to EPA/WA/OR of work elements for the Site, together with an associated schedule, that are planned for the time until the anticipated effective date of the Federal Facility Agreement which is projected to be mid-April 2023;
2. The designation by USACE of a Project Manager for the Site who has the authority to work directly with EPA/WA/OR project managers for the purpose of planning and implementing work for the Site;
3. The involvement of the Yakama Nation in meetings to discuss work for the Site and in the review of documents produced by USACE for work at the Site; and
4. The preparation by USACE and distribution to EPA/WA/OR of a proposed draft Site Management Plan. As I understand it, USACE is preparing a document for distribution to EPA/WA/OR which depicts work USACE views as complete together with anticipated future work. Such a document is not mutually exclusive of a Site Management Plan and these documents very likely will actually contain overlapping elements. Since the Site Management Plan is a crucial component of the Federal Facility Agreement, USACE needs to produce a draft of the Site Management Plan as soon as possible.

It is important to EPA that we reach quick resolution with USACE on these matters.

Respectfully,

Richard

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